IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6062 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL D VASHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6062 of 1999

MR JD AJMERA for Petitioner No. 1

MR K.L.PANDYA, AGP for Respondent No. 1 and 3

MR HS MUNSHAW for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 06/10/2003

ORAL JUDGEMENT

Heard learned advocate Mr. J.D.Ajmera for petitioner, learned AGP appearing on behalf of respondent

Nos. 1 & 3 and learned advocate Mr. H.S.Munshaw appearing on behalf of respondent No.2.

2. The brief facts of the present petition are as under.

2.1 The petitioner was drawn from the State services to the services of the District Panchayat. He was again recalled to the State services. The petitioner did not resume back his duties with the State. Consequently, he has been terminated. There was break in service due to intervening absence which has been treated as leave without pay affecting the petitioner's service as well as pensionary benefits. On 19.2.1959 the petitioner was appointed as Stock Mate with respondent No.1. On 1.4.1963 petitioner was transferred to District Panchayat and on 21.5.1973 petitioner's services were recalled by the State services but he was not reported back to the State and ultimately the services of the petitioner was terminated by order dated 11.7.1974. The said order of termination was cancelled on 28.9.1979 thereafter this Court has passed an order on 10.7.1980 in favour of the petitioner and ultimately petitioner had resumed the duty at Dholera under Panchayat services on 28.7.1980. District Development Officer, Ahmedabad passed an order treating the absence period as leave without pay by order dated 27.4.1980. Then petitioner made a representation on 18.6.1981 to the District Development Officer. On 3.8.1981 District Development Officer sent a communication allaying petitioner's apprehension. Thereafter another petition was filed before this Court which was withdrawn on 18.3.1982 as it was premature one. On 12.6.1998 Veterinary Officer, Lamba forwarded pension papers to respondent No.3 but respondent No.3 raised various queries and objection. That is how present petition is filed.

3. Learned advocate Mr. J.D.Ajmera appearing on behalf of the petitioner has filed Special Civil Application No. 840 of 1980 wherein this Court (Coram: A.M.Ahmadi,J) has passed order on 10.7.1980 which is quoted as under:

"The Director of Animal Husbandry, respondent No.2 herein, has passed an order dated 9th July 1980 cancelling the previous order dated 2nd June, 1972. In view of the cancellation of the previous order, the petitioner becomes entitled to be employed by the District Panchayat, Ahmedabad. Mr. J.M.Patel, learned advocate for respondent Nos. 3 & 4 states at the bar that the

petitioner will be given posting order within 15 days. Mr. Ajmera, learned advocate for the petitioner states that he will not claim back wages. He will, however, be entitled to all other benefits and refixation of salary according to the rules as if he continued in service. To that Mr. Patel agrees.

In view of the above above, Mr. Ajmera withdraws the petition. Notice discharged."

4. A bare perusal of the said order is that the the petitioner will not claim back wages but he will, however be entitled to all other benefits and refixation of salary according to the rules as if he is continued in service. To that extent learned advocate Mr. Patel at the relevant time appearing on behalf of respondent No.2 was agreed. Therefore, learned advocate Mr. Ajmera submitted that the District Development Officer who has passed the orders after considering the decision of this Court dated 10.7.1980 on 27.4.1981 treating the absence period as leave without pay but service has been considered continuous one. Therefore, Mr. Ajmera has submitted that petitioner is entitled all the benefits as if the petitioner was remained in service. He is only not entitled back wages of interim period.

5. The affidavit-in-reply is filed by respondent No.2 raising the same query that petitioner is not entitled the pensionary benefits and other fixation benefits because he remained out of job for more than 8 years and therefore, according to Rules and Government Resolution petitioner is not entitled any benefit. The affidavit-in-reply is also filed by R.K.Pathak, District Development Officer. Learned AGP Mr. Pandya has submitted that petitioner had given in writing to the respondent that in case, if in future, if any amount is due in favour of the Government, petitioner is ready to pay the same amount towards retiral benefits including pension. Learned AGP Mr. Pandya has also submitted that affidavit which has been filed by respondent No.3 S.M.Patel, District Assistant Inspector, Office of the Local Fund Accounts, Ahmedabad, wherein in para 3 it is made clear by him that the order which has been passed by the District Development Officer, Ahmedabad on 27.4.1981 not noted in the service book and whatever the entry made in the service book indicates the office order passed by the District Animal Husbandry Officer of District Panchayat, Ahmedabad. Even according to the respondent No.3 that entry was also vague and not clear and due to this, previous pay fixation of the petitioner has been

admitted by the audit. Learned AGP Mr. Pandya has also submitted that the order which has been passed by the District Development Officer on 27.4.1981 was not known to the department and ultimately after verification of the said order, the audit department has suggested to obtain Government orders.

6. I have considered the submissions made by all the learned advocates. It is clear from the order passed by this Court on 10.7.1980 that a specific submission has been made by Mr. Ajmera to the effect that earlier order of termination which was set aside, then petitioner become entitled to be employed by District Panchayat, Ahmedabad and Mr. J.M.Patel had appeared on behalf of respondent No.2 in the present petition and in earlier petition had appeared on behalf of respondent Nos. 3 & 4 who stated before the Court that petitioner will be given posting order within 15 days. At that occasion learned advocate made it clear that petitioner will not be given the amount of back wages but he is entitled all other benefits and refixation of salary according to rules as if he remained continued in service. To that Mr. Patel had agreed, meaning thereby, that refixation of the salary and continuation of service both have been admitted by learned advocate Mr. J.M.Patel on behalf of Panchayat. Considering this aspect this Court (Coram:Ms. R.M.Doshit,J) in the present petition has passed order on 26.6.2000 which is quoted as under:

"Heard the learned advocates.

2. Rule. By the interim order, the operation of the impugned objection dated 19th November, 1998 raised by the respondent no.3 shall stand stayed. The petitioner's claim for pay-fixation and the consequential benefits shall be processed irrespective of the aforesaid objection dated 19th November, 1998 and the amount that may be found due and payable to the petitioner shall be paid within a period of three months from the date of the order of pay-fixation. The petitioner shall, within 15 days from today, give an undertaking to this Court to the effect that he shall not withdraw this petition and that in the event he loses in the petition, he shall refund the amount that may be found to be recoverable from him within the period that may be stipulated by the Court. Copy of the undertaking shall be furnished to each of the respondents. Direct service is permitted."

7. Learned advocate Mr. Ajmera has submitted that in pursuance to the order passed by this Court on 10.7.1980, Mr. Patel had admitted the continuous service of the petitioner and on that basis whatever benefit is available to the petitioner same has been paid by the respondents and to that extent an undertaking is already filed by the petitioner on 10.7.2000.

8. On the basis of the facts which are on record, according to the service rules or Government Resolution petitioner may not be entitled such benefit once the Advocate appeared on behalf of the Panchayat had admitted the claim of the petitioner before this Court and it was recorded by the Court, it is the duty of the Panchayat to implement the same on their behalf. If the Panchayat is not agreed to that then they should have to file review application before this Court. No such review application was filed by the Panchayat before this Court even the said order has not been challenged before the higher forum by the authority, therefore, such submission of Mr. Patel on behalf of Panchayat is binding to the Panchayat and accordingly petitioner is entitled to the benefit which was paid to the petitioner. Therefore, according to my opinion whatever benefits have been paid to the petitioner in pursuance to the statement made by Mr. Patel on behalf of Panchayat, is legal and valid and there is no illegality committed by the Panchayat State Government. According to my opinion petitioner is entitled for that benefit for which payments were made. Therefore, present petition is allowed. Rule is made absolute to that extent. No order as to costs.

(H.K.Rathod,J)

Jayanti*